Anvest Corp Sdn Bhd v Wong Siew Choong Sdn Bhd

HIGH COURT (KUALA LUMPUR) — CIVIL SUIT NO S6-22-242 OF 1989
MOHD SAARI J
30 NOVEMBER 1999

Land Law *— Sale and purchase of land — Beneficial ownership — Agreement breached by vendor — Vendor subsequently received compensation for acquisition of part of land — Purchaser successful in action for specific performance — Whether purchaser had derived beneficial ownership at time of acquisition*

The plaintiff, through its estate agent, offered to purchase a piece of land ('the land') from the defendant and the defendant accepted the offer unconditionally. Some disputes arose between the parties and resulting with the plaintiff claiming for specific performance of the contract of sale when the defendant failed to honour the agreement from early 1988. The High Court dismissed the plaintiff's claim. When the matter was brought on appeal, the Court of Appeal directed that the case be remitted to the High Court for a proper order to be made as to the completion of the contract (see [1998] 2 MLJ 30). This was upheld by the Federal Court (see [1999] 3 MLJ 557). An area of 1,220 sq m (13,131.95 sq ft) out of total area of the land was acquired by the government at the rate of RM400 per sq ft. It was not in dispute that the defendant received an award of RM5,252,783.20 on 2 July 1997. The issue for determination was who was the beneficial owner of the land at the time of the land acquisition.

Held, allowing the application:

When the defendant sold the land to the plaintiff, the defendant became a trustee for the plaintiff subject to the payment of the balance of purchase price and the plaintiff was the beneficial owner of the land at the time of the land acquisition. Therefore, the acquisition award of RM5,252,783.20 belongs to the plaintiff and must be deducted from the purchase price (see pp 511H–I, 512B, D). By the defendant failing to honour the agreement as embodied in letter dated 14 October 1988, the effect would be to prevent the plaintiff from completing the contract in paying full purchase price, and for the court to hold that the defendant was the beneficial owner of the land at the time of land acquisition, would tantamount to allowing the defendant to benefit from its own breach or wrong. Further, there was nothing to suggest that the plaintiff was not able and not willing to complete the contract prior to the date of land acquisition (see p 512A–C).

[Bahasa Malaysia summary

Plaintif melalui ejen harta tanahnya, telah membuat tawaran untuk membeli sekeping tanah ('tanah tersebut') daripada defendan dan

defendan telah menerima tawaran tersebut tanpa syarat. Beberapa pertikaian telah timbul antara pihak-pihak tersebut dan mengakibatkan plaintif menuntut pelaksanaan spesifik terhadap kontrak jualan tersebut apabila defendan gagal untuk menepati perjanjian tersebut sejak awal 1988. Mahkamah Tinggi telah menolak tuntutan plaintif. Apabila perkara ini dihadapkan untuk rayuan, Mahkamah Rayuan telah mengarahkan kes tersebut diremitkan ke Mahkamah Tinggi agar satu perintah yang betul dibuat tentang penyelesaian kontrak tersebut (lihat [1988] 2 MLJ 30). Ini telah disahkan oleh Mahkamah Persekutuan (lihat [1999] 3 MLJ 557). Seluas 1,220 meter persegi (13,131.95 kaki persegi) daripada keluasan seluruh tanah tersebut telah diperoleh oleh kerajaan pada kadar RM400 satu kaki persegi. Adalah tidak dipertikaikan bahawa defendan telah menerima award sejumlah RM5,252,783.20 pada 2 Julai 1997. Isu penentuan adalah siapa pemilik benefisiari tanah tersebut pada masa perolehan tanah tersebut.

Diputuskan, membenarkan permohonan tersebut:

Apabila defendan menjual tanah tersebut kepada plaintif, defendan telah menjadi pemegang amanah untuk plaintif tertakluk kepada bayaran baki harga belian dan plaintif merupakan pemilik benefisiari tanah tersebut pada masa perolehan tanah tersebut. Oleh demikian, award perolehan berjumlah RM5,252,783.20 adalah milik plaintif dan perlu dipotong daripada harga belian (lihat ms 511H–I, 512B, D). Dengan kegagalan defendan untuk menepati perjanjian tersebut sebagaimana yang telah terkandung di dalam surat bertarikh 14 Oktober 1988, akibat daripadanya adalah untuk menghalang plaintif daripada menyelesaikan kontrak tersebut dengan membayar harga belian penuh, dan untuk mahkamah memutuskan bahawa defendan adalah pemilik benefisiari tanah tersebut pada masa perolehan tanah tersebut, akan sama seperti membenarkan defendan mendapat faedah daripada kemungkiran dan kesalahannya sendiri. Tambahan pula, tiada apa yang boleh mencadangkan bahawa plaintif tidak mampu dan tidak rela untuk menyelesaikan kontrak tersebut sebelum tarikh perolehan tanah tersebut (lihat ms 512A–C).]

Notes

For cases on beneficial ownership, see 8 *Mallal's Digest* (4th Ed, 1999 Reissue) paras 2873–2878.

Cases referred to

Gimstern Corp (M) Sdn Bhd & Anor v Global Insurance Co Sdn Bhd [1987] 1 MLJ 302 (refd)

Hillingdon Estates v Stonefield Estates Ltd [1952] 1 Ch 627 (refd)

Lysaght v Edwards (1876) 2 Ch D 499 (refd)

Plenitude Holdings Sdn Bhd v Tan Sri Khoo Teck Puat & Anor [1992] 2 MLJ 68, [1993] 1 MLJ 113 (refd)
Plews v Samuel [1904] 1 Ch 464 (refd)
Temenggong Securities v Registrar of Titles Johore [1974] 2 MLJ 45 (refd)
Williams v Greatrex [1957] 1 WLR 31 (refd)

Legislation referred to

National Land Code 1965 s 417

Wong Kim Fatt (*Gulam & Wong*) for the plaintiff.
Harcharan Singh (*Harcharan & Co*) for the defendant.

Mohd Saari J: In this summons (encl 82), the plaintiff prays for the following reliefs amended:

(1) That the defendant do specifically perform and complete the sale and purchase agreement between the defendant as vendor and the plaintiff as purchaser, as embodied in the letter dated 11 October 1988 written by Appraisal (M) Sdn Bhd to the defendant, relating to all that piece of land known as Lot No 129, Section 44, held under Grant No 6853, originally measuring 100,934 sq ft (9,377 sq m) or thereabouts less 1,220 sq m (about 13131 sq ft) being area acquired by PTD, situate in the Town and District of Kuala Lumpur, free from all encumbrances.

(2) Within two weeks from the date of this order, the defendant shall deposit the issue document of title of the said land, ie the said Grant No 6853, with the registrar or the deputy registrar of this honourable court, free from all encumbrances, together with the defendant's memorandum and articles of association, the current quit rent and assessment receipts for the said land. The defendant or its solicitors shall forthwith give notice of such deposit in writing to the plaintiff's solicitors, M/s Gulam & Wong, Johor Bahru.

(3) From the date of such deposit, the plaintiff shall, within the period of six months or such other time as the court directs, pay the balance of purchase price of RM298,586.80 to the registrar or deputy registrar of this honourable court, who shall thereafter sign the transfer of the said land and the adjudication form and other relevant documents for and on behalf of the defendant to convey a good title of the said land in favour of the plaintiff free from all encumbrances and shall forthwith deliver the said transfer duly executed, the said Grant No 6853 and the other documents to the solicitors for the plaintiff.

(4) The defendant shall forthwith deliver vacant possession of the said land to the plaintiff upon payment of the purchase price or the balance thereof to the registrar or deputy registrar as aforesaid.

(5) The Registrar of Titles or the appropriate registering authorities be directed to register forthwith the said transfer of the said land Lot No 129, Section 44, Grant No 6853, Town and District of Kuala Lumpur, in favour of the plaintiff notwithstanding any caveat,

prohibitory order or other registered encumbrances, under s 417 of the National Land Code 1965. A

(6) (withdrawn).

(7) Costs of and incidental to this application be paid by the defendant to the plaintiff.

(8) There be liberty to apply. B

Background

At all material times, the defendant was the registered owner of all that piece of land known as Lot No 129, Section 4, held under Grant No 6853 measuring 100,934 sq feet (9,377 sq m) or thereabouts, situate in the town and district of Kuala Lumpur ('the land'). Acting on behalf of the plaintiff, the estate agent (Appraisal (M) Sdn Bhd) offered to the defendant to purchase the land at the price of RM55 per sq ft on terms and conditions as set out in a letter dated 11 October 1988 (exh 'KAY 3'). The defendant, through its managing director, accepted the offer unconditionally. It is not in dispute that the defendant failed to honour the agreement from the beginning in 1988. C D

For ease of reference, the letter (exh 'KAY-3') is reproduced as set out below:

APPRAISAL (M) SDN BHD E
CHARTERED SURVEYORS & REGISTERED VALUERS
Lot 20.7, 20th Floor, Menara Maybank, No, 100,
Jalan Tun Perak, 50050 Kuala Lumpur.
Telephone: 2322022

Private & Confidential

11 October 1988 F

M/S Wong Siew Choong Sdn Bhd
c/o No 3 Jalan Yap Kwan Seng
50450 Kuala Lumpur.

Attn: Mr Wong Kong Suan

Dear Sirs, G

Proposed sale of property held under Lot No 129, Section 44, Town and District of Kuala Lumpur (100,934 sq ft)

We are pleased to inform you that the purchaser has confirmed to purchase the abovementioned land.

The terms and conditions, as agreed, are as follows: H

(1) price is at RM55 per sq ft;

(2) the property has freehold title;

(3) you are able to give vacant possession of the property;

(4) 10% of the price will be paid on signing of the sale and purchase agreement; and I

(5) the balance 90% to be paid six months after the signing of the sale and purchase agreement.

The purchaser's solicitors are:

Mr Choong Pee Choy of
M/s Choong & Co
Room 805/807, 8th Floor, Lee Wah Bank Building
Medan Pasar, 50050 Kuala Lumpur
Tel: 2384628/2320858

Kindly confirm that the abovementioned terms and conditions by signing and returning the duplicate copy of this letter.

Yours faithfully APPRAISAL (M) SDN BHD	The abovementioned terms and conditions are confirmed herewith.
Sgd FOO FANG LIM Registered Estate Agent	Wong Siew Hoong Sdn Bhd ..... Authorized Signature Sgd Managing Director
Name:	Date: 14 October 1988.

In the judgment of the Court of Appeal (see [1998] 2 MLJ 30) which set aside the judgment of the High Court, it was held that there was a binding contract as embodied in letter (exh KAY-3) and specific performance was decreed. The Federal Court upheld the decision of the Court of Appeal (see [1999] 3 MLJ 577) and held inter alia (at p 581E–F) as follows:

> ... in our view, the Court of Appeal was justified and was right in reversing the decision of the learned trial judge and directing the case to be remitted to the High Court for proper order to be made as to the completion of the contract.

An area of 1,220 sq m (13,131.95 sq ft) out of total area of the land was acquired by the government at the rate of RM400 per sq ft. It is not in dispute that the defendant received an award of RM5,252,783.20 on 2 July 1997.

Issue

The issue for determination is who was the beneficial owner of the land at the time of the land acquisition.

In *Plenitude Holdings Sdn Bhd v Tan Sri Khoo Teck Puat & Anor* [1992] 2 MLJ 68, the sale and purchase agreement was executed in 1984 at the contract price of RM47,939,958. In that case, when an order for specific performance was decreed in 1992, the High Court held that the vendor was entitled to receive payment based on contract price at the time of contract. The decision was upheld by the Supreme Court [1993] 1 MLJ 113.

On another aspect, when the defendant sold the land to the plaintiff, on the defendant accepting unconditionally the terms as embodied in letter (exh KAY-3) on 14 October 1988, the defendant became a trustee for the plaintiff subject to the payment of the balance of purchase price (see *Lysaght v Edwards* (1876) 2 Ch D 499 at p 506, and *Williams v Greatrex* [1957]

1 WLR 31 at p 36. These two cases were applied by the Federal Court in *Temenggong Securities v Registrar of Titles Johore* [1974] 2 MLJ 45 (FC).

By the defendant failing to honour the agreement as embodied in letter (exh KAY-3) the effect would be to prevent the plaintiff from completing the contract in paying full purchase price. In this regard, it is noted that time was not of essence of the contract. For this court to hold that the defendant was the beneficial owner of the land at the time of land acquisition, it would tantamount to allowing the defendant to benefit from its own breach or wrong (see *Gimstern Corp (M) Sdn Bhd & Anor v Global Insurance Co Sdn Bhd* [1987] 1 MLJ 302). Further there is nothing to suggest that the plaintiff was not able and not willing to complete the contract prior to the date of land acquisition.

For the defendant, it is submitted that the plaintiff is not entitled to the acquisition award. For the proposition, the learned counsel cites the case of *Plews v Samuel* [1904] 1 Ch 464 and *Hillingdon Estates v Stonefield Estates Ltd* [1952] 1 Ch 627. With respect, I find nothing in ratio decidendi of the two cases which help the defence's case.

In view of the foregoing, it is my finding that the plaintiff was the beneficial owner of the land at the time of the land acquisition. Therefore, the said acquisition award of RM5,252,783.20 belonged to the plaintiff and must be deducted from the purchase price.

Completion account

The completion account of the sale and purchase of the land should be as follows:

	RM
Total Purchase Price (100,934 sq ft at the rate of RM55 per sq ft)	5,551,370.00
Less: Acquisition Award	5,252,783.20
Amount Payable to the Defendant	298,586.80

In the premise and for reasons given above, I order in terms of summons in chamber (encl 82) as amended.

Application allowed.

Reported by Chin En Tek